

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY HICKMAN-SMITH,

Defendant.

8:14CR367

ORDER

This matter is before the Court on the Clerk of Court's notice that the defendant filed an untimely appeal. [Filing No. 72](#). There is also pending a copy of the Clerk's in forma pauperis memo. [Filing No. 71](#). The Court sentenced defendant on August 7, 2015, to Count I of the Indictment. The Court committed the defendant to the custody of the Bureau of Prisons for 120 months. [Filing No. 67](#). On October 20, 2015, defendant filed a Notice of Appeal, in order to appeal this Court's decision to deny his motion to suppress evidence. [Filing Nos. 52 and 70](#). Defendant indicates in this motion that he is aware the appeal is untimely, however, he argues that his legal counsel gave him incorrect advice about his right to appeal to the Eighth Circuit Court of appeals as to the suppression issue.

A defendant generally has 14 days from the date of the judgment to file an appeal. See [Fed. R. App. P. 4\(b\)\(\(1\)\(A\)](#). The district court may extend that deadline for a period not to exceed 30 days from the expiration of the time otherwise set forth in Rule 4(b) for good cause or excusable neglect. [Fed. R. App. P. 4\(b\)\(4\)](#). Even if the Court finds that there is good cause for this motion, which it does not, the defendant has failed to file his motion for an untimely appeal in a timely manner. The Court entered

judgment on August 7, 2015, and the extended potential rule time of about 44 days thereafter would have been around September 22, 2015, at the latest. Defendant did not file his notice of appeal until October 20, 2015, nearly a month after the latest possible deadline. Accordingly, the Court determines that defendant's appeal is untimely.

Further, the Court will deny the defendant's motion to proceed in forma pauperis. During this case, defendant had retained counsel. With regard to this appeal, defendant did not file an in forma pauperis pleading or affidavit, did not file a trust account statement, and did not pay the \$505.00 filing fee. For these reasons, the Court denies defendant's request for in forma pauperis status.

THEREFORE, IT IS ORDERED THAT defendant's notice of appeal, [Filing No. 70](#), is untimely. Further, the Court determines that defendant is not permitted to proceed in forma pauperis in this case. [Filing No. 71](#).

Dated this 28th day of October, 2015

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge